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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.H., Defendant and Appellant.	A146322 (Alameda County Super. Ct. No. SJ1502493901)

I.

INTRODUCTION

J.H. appeals from a judgment entered after she was found to come within the provisions of Welfare and Institutions Code section 602. She contends that a jurisdictional finding that she committed a violation of Vehicle Code[1] section 20001, subdivision (a) (section 20001(a)) is not supported by substantial evidence, and, as a result, her Fourteenth Amendment right to due process was violated. We disagree and affirm the judgment.

[1] All further statutory references are to the Vehicle Code, unless otherwise indicated.

II.

PROCEDURAL HISTORY

In May 2015, the Alameda County District Attorney's Office filed an original wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that appellant violated section 20001(a) (a misdemeanor) on November 3, 2014, when she was involved in a motor vehicle accident resulting in injury to another, and failed to stop at the scene and perform those duties required by law.

A jurisdictional hearing was held on September 1, 2, and 3, 2015. At the conclusion of the presentation of evidence, and following the arguments of counsel, the court found true the allegation that appellant had violated section 20001(a). Appellant was ordered to be held in juvenile hall until September 7, at which time she was to be released into the care and custody of her mother on electronic monitoring.

At a disposition hearing on September 18, 2015, the court placed appellant on probation subject to terms and conditions without wardship. The juvenile court also imposed certain fees to be determined by a financial hearing officer, and reserved the issue of restitution.

III.

EVIDENCE PRESENTED AT THE JURISDICTIONAL HEARING

The district attorney elicited testimony about appellant's car accident from two witnesses: the accident victim, T.H., and California Highway Patrol Officer Daniel Jacowitz.

T.H. testified that he was hit by a car while riding his bike home from school on November 3, 2014.[2] At the time, T.H. was a freshman at Castro Valley High School, and he lived 10 minutes away by bike from the school. T.H. recalled that he was on Center Street when he first noticed a blue Nissan traveling a car length or two behind him. Center Street has one lane in each direction and there were a lot of cars traveling in each direction. As T.H. was getting ready to turn left onto Gem Street, he looked back over

[2] All date references in this section of our opinion are to the 2014 calendar year.

his left shoulder, began his turn, and the blue Nissan hit the back tire of his bike. The contact caused T.H. to fly off his bike into the middle of the cross street. He was wearing a backpack, but was not wearing a helmet or pads to protect his arms or legs.

T.H. testified that he landed on his right shoulder and then fell onto his "butt" about six feet away from his bike. He was on the ground for a few seconds, got up and made eye contact with the driver, who he later identified as appellant, and then made a gesture like "What the F?" The driver stopped for three to five seconds, looked at T.H., and then drove straight ahead on Center Street.

T.H. got back on his bike and completed his turn onto Gem Street, but decided after about 20 seconds to try and follow the car that hit him. He got to within five to ten car lengths behind it and was able to see that the car was a Nissan Leaf and that the last three digits of the license plate were "169." At no time while he was following the Nissan did T.H. see it park or pull over to the side of the road. After the car travelled over the top of a hill, T.H. gave up his chase, went home, and called his mother. Not long after the incident, T.H. saw the Nissan parked near his high school. He texted his mother that he had found the car, and she contacted the police.

T.H. testified that after the accident his shoulder and tailbone "hurt really bad," that he was not able to play sports for the remainder of the school year, and that he still experiences pain when he runs.

Officer Jacowitz testified that on November 3, he was dispatched to the intersection of Center and Gem Streets to investigate an alleged hit and run accident, but neither party was at the scene. Approximately 45 minutes later, Jacowitz went to talk to T.H. at his residence. T.H. had a slight skin abrasion on his right forearm and complained of pain in his arm and shoulder. T.H. and his parents told Jacowitz that they planned to seek aid at the hospital. T.H. gave a description of the car involved which he said was a light blue Fiat, small compact car with a license plate with the last three numbers "169." He described the driver as a young white female about 17 years old with

blond hair pulled back into a pony tail. The passenger in the car looked similar to the driver.[3]

Jacowitz testified that on November 14, he used information provided by T.H.'s mother to locate appellant's car, which was parked near Castro Valley High School. Jacowitz noticed some minor scratches and paint abrasions to the front bumper of the Nissan below the license plate. The officer spoke to appellant and her sister, G.H., when they arrived at the car that afternoon. He stated G.H. cried throughout the encounter.

Jacowitz testified that appellant admitted driving the Nissan on November 3 and hitting someone who was riding a bicycle. She admitted that she saw the person she hit fall down. Appellant stated that she tried to stop further down the road because she did not want to obstruct traffic or block anyone's driveway. Jacowitz did not recall appellant saying that she stopped her car. She admitted that she did not give the person she hit her insurance or driver's license information, and she did not tell her parents what had happened when she got home.

At the jurisdiction hearing, appellant elicited testimony from two witnesses before testifying herself. Sixteen-year-old J.W. was a student at Castro Valley High School and a friend of appellant's sister, G.H. He had also known T.H. for three years. J.W. testified that T.H.'s reputation around school was of being a bit of a "sadist." T.H. was entertained by others getting hurt, either physically or by insults. J.W. thought that T.H. would lie "in a heartbeat" if he felt it was in his interest to do so.

G.H. testified that she was in the front passenger seat of her sister's car when the incident with T.H. occurred while appellant was driving home from school. According to G.H., appellant was very focused about her driving and usually did not even turn on the

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[3] At the jurisdiction hearing, T.H. admitted that he lied to Jacowitz about wearing a helmet on November 3. He testified that he does not wear a helmet when riding his bike, even after the accident with appellant. He stated he knows it is illegal not to wear a helmet while riding his bike. The bike he was riding at the time of the collision was a BMX road bike that he used for "tricks" like grinding and jumping. It was a "single speed bicycle," with no gears or brakes.

radio while driving. That day, G.H. first noticed T.H. when he was riding his bicycle in an erratic way—swerving left and right. Because of this, appellant slowed the car down to about 5 miles per hour. At one point T.H. made a sharp left and appellant slammed on her brakes, coming to a complete stop. After stopping, T.H. hit the front of the car. He then fell down, got right up, and rode away. G.H. and appellant looked around for T.H. for two minutes and when they did not see him they drove off. He did not seem hurt.

Appellant, then a senior at Castro Valley High School, testified that the car involved in the accident with T.H. was purchased used and that it had a few scratches on it when it was purchased. On November 3, she was driving the car home from school with her sister when she noticed a bicyclist swerving back and forth about eight feet across the street. When she saw this, she slowed the car down to 5 or 10 miles per hour. At some point she brought her car to a complete stop, and the front tire of the bike hit the front of her car. The rider lost his balance and fell to the side while straddling the bike. He got up immediately, glared at appellant, and rode off. After the impact, appellant waited in her car for two to three minutes looking to see where the bicyclist had gone. She stopped the car in the middle of the street looking for him. When she did not see him, she looked for a place to pull the car over, but there was nowhere to stop.

Appellant testified that several days later, she went to her car at the end of the school day, and met a CHP officer who said he was investigating a report that she hit a bicyclist and then rode away without giving information. She did not say anything in response because she was afraid of him and did not want to talk back. She never challenged the version of the accident suggested by the officer because he seemed convinced he was right. She wrote down his version of the accident and signed it. Appellant testified that she did not tell the officer that the statement she was making was false although she knew it to be. She was worried because the officer told her that if she was dishonest she would be in "big trouble."

Under cross-examination, appellant admitted that before she wrote her statement about what happened during the accident, the officer told her to write her story in her own words, to be specific and to tell her side of the story. Appellant also admitted that

she told the officer that she was driving about 15 miles per hour, not 5 or 10, as she testified in court. In court appellant testified that the bike hit her car after it was stopped, but in her police statement appellant stated the front of her car knocked T.H. off his bike. She also wrote in her statement that the impact knocked him into the other lane of traffic.

IV.

DISCUSSION

A. Standard of Review

As noted, the sole issue on appeal is whether the court's determination that appellant violated section 20001(a) was factually supported by the evidence. "In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. . . . Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]" (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; accord, *In re David H.* (2008) 165 Cal.App.4th 1626, 1633.)

B. Section 20001(a) et seq.

Section 20001(a) provides: "The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004."

Section 20003, subdivision (a) mandates the following: "The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including

transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person."

The basic purpose of this statute is to "prohibit negligent or wanton drivers from seeking to evade civil or criminal prosecution by escape before their identity can be established, and similarly to prohibit all drivers, whether negligent or not, from leaving persons injured in collisions with cars driven by them, in distress and danger for want of proper medical treatment. [Citations.]" (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 311, p. 1056; *People v. Capetillo* (1990) 220 Cal.App.3d 211, 218.)

Appellant argues that she did not violate section 20001(a) because she did not know T.H. had been injured in the incident, and there was no reasonable basis for her to conclude otherwise. (Citing *People v. Holford* (1965) 63 Cal.2d 74, 80 ["criminal liability attaches to a driver who knowingly leaves the scene of an accident if he actually knew of the injury or if he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"]; see also *People v. Nordberg* (2010) 189 Cal.App.4th 1228, 1239.) The juvenile court necessarily made an implied finding to the contrary, and we conclude that finding is supported by substantial evidence.

T.H. testified that the impact with appellant's car caused him to fly over the handlebars of his bike, landing on his shoulder and buttocks some six feet away. He was not wearing either a helmet or protective pads for his arms and legs. Despite the fact that his shoulder and tailbone "hurt really bad," he got up from the busy roadway surface as quickly as he could. Later that day after he arrived home, his parents took T.H. to the hospital.

From this evidence it was proper for the court to find that a reasonable person observing these circumstances would conclude that T.H. likely was injured as a result of the collision. While one could infer that T.H. getting up quickly was an indication that he was not injured, a competing inference was that he wanted to get out of the middle of the

roadway in order to avoid being struck by another motorist. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for the reasonable inference necessarily drawn by the trier of fact. (*In re Katrina C.*, *supra*, 201 Cal.App.3d at p. 547; *In re David H.*, *supra*, 165 Cal.App.4th at p. 1633.)

In reaching our conclusion, we are mindful that appellant and her sister, G.H., testified that T.H. did not seem to be hurt in the collision, in part because he got up quickly, expressed anger at appellant, and then rode off. However, after hearing all of the evidence, the juvenile court judge made clear that he disbelieved the version of events testified to by appellant and G.H.:

"THE COURT: Thank you. [¶] You've both done a good job. [¶] [Appellant's counsel,] [y]ou've done a very good job.

"I'll tell you this is a disturbing one because I'm absolutely convinced that you're the biggest liar I've seen in a long, long time. You guys concocted this story after you told the truth to the police officer on the 11th of November. You made it up. You probably made your sister testify that way and/or at least encouraged her. And what has happened here is it's an insult to the Court. It's an insult to what we do, which is to seek the truth.

"This wasn't a big deal. This crime was not a big deal on the scale of the crimes that we have in here. We have murders. We have rapes. We have robberies. This was not a big deal.

"But to come in here and to make this all up and to try to convince me and the others that you did what you said you did is ridiculous. And in fact, when you changed your story from yesterday—

"Was it yesterday?

"Yeah, from the first time you testified in the morning until the afternoon, from one story to another, and then that was totally different from the initial story you gave to the police officer, it was obvious that you were going along and trying to fit the facts into what was happening before. And, you know, that is a bad thing to do.

"So you're going to be remanded today and go to Juvenile Hall for the weekend."

Of course, it was well within the province of the trier of fact to judge the credibility of the witnesses and to choose which of two versions to believe. Likewise, it is not our role to second guess this determination. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

Based upon the foregoing analysis and the factual record of the jurisdictional hearing, we conclude that the trial court's decision that appellant violated section 20001(a) was supported by substantial evidence. Accordingly, we affirm the jurisdictional and dispositional orders entered in this case by the juvenile court.

V.

DISPOSITION

The judgment arising from the jurisdictional finding and disposition is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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STREETER, J.